

REMARKS/DISCUSSION OF ISSUES

The present Preliminary Amendment is being filed concurrently with a Request for Continued Examination (RCE). The filing of the RCE constructively withdraws the appeal of the of the present application to the Board of Patent Appeals and Interferences.

Claims 1-29, 31-33 and 39-40 are pending in the application upon entry of the present amendment. Claims 1, 24, 29, 31, 33 and 40 are independent claims.

In the Final Office Action of June 18, 2002, claims 1-29, 31-33 and 35-38 were rejected under 35 U.S.C. 102(b) as being anticipated by *Kuffner, et al.* (U.S. Patent 5,486,836).

The Office Action asserts that the *Kuffner, et al.* antenna is used in a portable phone where signal strength is continuously changing and provides switching between a plurality of antenna configuration states. The Office Action notes that the radiation parameters are predetermined by the algorithm used to monitor signal strength. The Office Action asserts that signal strength varies because of the phone's environment changing continuously and that the patch antenna's polarizations are the configuration states.

Contrastingly, the presently amended independent claims 1, 24, 29, 31 and 33, feature an antenna structure that is switchable between a plurality of antenna configuration states, where each of these antenna configuration states is predefined and optimized for use in a respective one of a plurality of predefined physical operation environments and is associated

therewith. Thus, each predefined environment has a predefined associated antenna configuration state associated with it for use when the predefined physical operation environment is present (e.g., a waist position as set forth in claim 6).

It is respectfully submitted that the reference to *Kuffner, et al.* lacks at least the feature of having a predefined antenna configuration state associated with a predefined physical operation environment. Instead, *Kuffner, et al.* discloses conducting an adaptive search to determine the best reception configuration at any given time.

Accordingly, because *Kuffner, et al.* lack at least one of the elements of amended claims 1, 24, 29, 31 and 33, this reference cannot serve to properly establish a *prima facie* case of anticipation. As such, it is respectfully submitted that these rejections be withdrawn. Moreover, because independent claims 1, 24, 29, 31 and 33 are allowable, dependent claims 2-23, 25-28, 32, and 35-38 should also be allowable.

Dependent claim 12 has been amended so that the sensor is used solely to affect the switching device. The sensor in *Kuffner et al.* is not so limited. Thus, claim 12 and claim 13 depending therefrom contain further limitations not found in the *Kuffner et al.* reference.

New dependent claim 39 features a radio communication device comprising a table storing the predefined environments and their respective associated antenna configuration states. (Support for this claim can be found in the application as filed at page 19, lines 22-24.) The reference to *Kuffner, et al.* lacks at least the table storing associations. Thus, claim

39 contains further features not found in the *Kuffner et al.* reference.

Newly added claim 40 relates to an antenna device in which the antenna structure comprises a plurality of antenna elements, a switching device selectively switches between a plurality of physical antenna configurations, and at least one of these physical antenna configurations comprises at least two of the antenna elements physically connected together by means of the switching device. (Support for this claim is found in throughout the specification and drawings, for example, see page 7, line 7 through page 12, line 21 and page 14, line 13 through page 15, line 14 and Figures 1-7.)

Contrastingly, the reference to *Kuffner, et al.* discloses two separate elements that are not connected together by switch 306, but instead a single one of these elements is selected for use at a time. Thus, new claim 40 contains limitations not found in the *Kuffner et al.* reference and should be allowable.

Conclusion

In view of the foregoing, applicant(s) respectfully request(s): the withdrawal of all rejections of record; the allowance of all the pending claims; and the holding of the application in condition for allowance. If any points remain in issue that may best be resolved through a personal or telephonic interview, the Office Action is respectfully requested to contact the undersigned at the telephone number listed below.

Except as otherwise stated in the previous Remarks, applicants note that each of the amendments have been made to place the claims in better form for U.S. practice or to clarify the meaning of the claims; not to distinguish the claims from prior art references, otherwise narrow the scope or comply with other statutory requirements.

If necessary, the Commissioner is hereby authorized in this, concurrent, and further replies to charge payment or credit any overpayment to Deposit Account Number 50-0238 for any additional fees under 37 C.F.R. §1.16 or under 37 C.F.R. §1.17.

In the event that there are any outstanding matters remaining in the present application, the Examiner is invited to contact William S. Francos, Esq. (Reg. No. 38,456) at (610) 375-3513 to discuss these matters.



by: William S. Francos (Reg. No. 38,456)
date: August 1, 2003

Volentine Francos, PLLC
Two Meridian Blvd.
Wyomissing, PA 19610
(610) 375-3513